22

No 271

IN THE

In the Supreme Court of the United States

In the Matter of
RALPH A. STILWELL
Bankrupt

In Bankruptcy
No. 16461

PETITION FOR WRIT OF CERTIORARI

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INDEX

CASES CITED

In re Neal, 270 F 289;

In re Silverman, 157 F 675;

In re McCarthy, 170 F. 859;

In re Scheffler, 68 F. (2d) 902;

In re Little, 65 F (2d) 777.

In the Supreme Court of the United States

1

In the Matter of RALPH A. STILWELL *Bankrupt*	In Bankruptcy No. 16461

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States: 2

Petitioners pray that a Writ of Certiorari issue to review the order of the Circuit Court of Appeals for the Second Circuit affirming the final order of the District Court of the United States for the Western District of New York entered on September 25, 1942.

OPINION BELOW

The opinion of the Court below, filed on April 22, 1943 is not yet reported and for convenience is printed in an appendix to a short brief filed with this petition, together with the mandate and the order on mandate and judgment. 3

BASIS OF JURISDICTION

Jurisdiction is invoked under Section 240a of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938.

The opinion of the Circuit Court of Appeals for the Second Circuit was filed April 22, 1943 and the order on the mandate of the U. S. Circuit Court of Appeals was granted and entered on the 17th day of May, 1943.

QUESTION PRESENTED

The fundamental question presented on this petition is whether the District Court sitting in Bankruptcy can deny the bankrupt's application for a discharge from his debts when he has brought his application to a hearing before the District Court, solely on the ground that the bankrupt had previously abandoned his application for discharge.

This question particularly involves Sec. 14, of the Bankruptcy Act as amended, relating to the granting of discharges and which does not specify abandonment as a ground for denying the bankrupt's discharge.

SUMMARY STATEMENT

On November 10, 1930, Ralph A. Stilwell, was adjudicated a voluntary bankrupt in the United States District Court for the Western District of New York. The proceedings on Bankrupt's petition were referred to

Hon. Joseph C. White, now deceased, Referee in Bankruptcy of the Chautauqua and Cattaraugus Districts. 7

The first meeting of the creditors was held before said referee on December 5, 1930, but none of the present objecting creditors appeared.

Bankrupt's petition for a discharge, dated February 11, 1931, was filed with the Clerk of District Court at Buffalo, N. Y., on March 23, 1931, and thereupon an order issued out of District Court directing notice of discharge to be published and mailed to creditors. It does not appear that the notice provided for in this order 8
was published or mailed to creditors at the time, although it is claimed by the bankrupt that he paid the required fees and disbursements at that time to Joseph A. Lazaroni, an attorney in the office of Harry M. Young, who was Attorney of Record for bankrupt.

The last act of the Referee in Bankruptcy, now deceased, in 1931, seems to be an order dated July 27, 1931, which recited that there was still owing a balance of $22.56, the fees and expenses required to be paid on discharge, and the Order to Show Cause on Dis- 9
charge was returned to the Clerk of the District Court with the recommendation that the matter be withheld until necessary disbursements were paid.

In July, 1940, bankrupt sought to obtain a copy of his discharge and the order of July 27, 1931 came to his attention, whereupon the $22.56 was paid. The fol-

lowing day, July 13, 1940, a discharge was granted to
10 the bankrupt by the District Court.

In August, 1940, five creditors, obtained an order from District Judge John Knight, directing the bankrupt to show cause why the discharge should not be vacated and why the bankrupt's proceedings for a discharge should not be dismissed.

An order was granted August 27, 1940, revoking, vacating, and setting aside the discharge and proceedings for discharge instituted by the bankrupt on March 23,
11 1931, by petition dated February 11, 1931, were dismissed. Bankrupt appealed to the Circuit Court of Appeals from the latter order and the Court held that the discharge was properly set aside on the ground that the notice to creditors, required by statute, was jurisdictional, but reversed the order which dismissed the proceedings and remanded the case back to the District Court with directions to receive evidence either of prejudice to the creditors or of a deliberate determination by bankrupt to forsake the proceedings.

12 Back in District Court, notice to creditors was ordered and notice was duly published and mailed to creditors. The same five creditors appeared and filed objections to the discharge, setting forth three grounds, namely, (1) failure to keep books; (2) delay resulting in prejudice to creditors; and (3) abandonment by bankrupt of his application for discharge.

On the hearing on discharge the District Court dismissed the first two objections but sustained the objection that the bankrupt had abandoned his application for discharge. On September 25, 1942, an order was entered denying the application for discharge on the ground of abandonment by the bankrupt.

From this order the bankrupt appealed to the Circuit Court of Appeals, Second Circuit. On appeal to the Circuit Court it was contended by the appellant that the bankrupt did not abandon his application for discharge and was entitled to his discharge by virtue of section 14 of the bankruptcy act as amended. The Circuit Court of Appeals affirmed the order of the District Court of April 22, 1943, and an order of affirmance was duly granted and entered in the District Court on May 17, 1943. The bankrupt desires a Writ of Certiorari to review the order affirming the decision of the District Court.

REASON FOR GRANTING THE PETITION

The Circuit Court of Appeals for the Second Circuit has decided an important question of Federal Law which has not been but should be settled by this court.

Section 14, subdivision (c) of the Bankruptcy Act as amended, provides as follows:

> The court shall grant the discharge unless satisfied that the bankrupt has (1) committed an offense punishable by imprisonment as provided under this

Act; or (2) destroyed, mutilated, falsified, con-
16 cealed or failed to keep or preserve books of account or records, from which his financial condition and business transactions might be ascertained, unless the court deems such act or failure to have been justified under all the circumstances of the case; or (3) obtained money or property on credit or obtained an extension or renewal of credit, by making or publishing or causing to be made or published in any manner whatsoever, a materially false statement in writing respecting his financial condition or (4) at any time subsequent to the first day of the twelve months immediately preceeding the filing of the petition in bankruptcy transferred, removed, destroy-
17 ed, or concealed or permitted to be removed, destroyed or concealed any of his property with intent to hinder, delay or defraud his creditors; or (5) has within six years prior to bankruptcy been granted a discharge or had composition or an arrangement by way of composition or a wage earner's plan by way of composition confirmed under this Act; or (6) in the course of a proceeding under this act refused to obey any lawful order of or to answer any material question approved by the court; or (7) has failed to explain satisfactorily any loss of assets or deficiency of assets to meet his liabilities; Provided, that if upon hearing of an objection of the court that
18 the objector shall show to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt has committed any of the acts which under this subdivision (c), would prevent his discharge in bankruptcy then the burden of proving that he has not committed any of such acts shall be upon the bankrupt.

The said Circuit Court of Appeals by its affirmance of the decision of the District Court, decided that even though a bankrupt has complied with all of the provisions of the Bankruptcy Act and even though he has brought his application for a discharge to a hearing and been examined, could be denied a discharge on a ground not specified in section 14, of the Bankruptcy Act as amended.

The decision of the lower court was based solely on the theory that the bankrupt abandoned the proceedings. This has the effect of adding a new ground on which to deny the bankrupt his discharge in bankruptcy thereby extending the provisions of section 14 (c) of the Act.

It is respectfully submitted that the grounds for objection to a discharge are statutory and exclusive and the bankrupt should not be denied his discharge on a ground not specified in this section of the Act.

Wherefore, it is respectfully submitted that this petition for Writ of Certiorari to review the Judgment of the Circuit Court of Appeals for the Second Circuit should be granted.

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BRIEF

IN THE SUPREME COURT OF
22 THE UNITED STATES

In the Matter of RALPH A. STILWELL, *Bankrupt.*	In Bankruptcy No. 16461

The bankrupt has filed his petition for a discharge in bankruptcy with the Clerk of the District Court at Buffalo, New York, on or about March 23, 1931. On or
23 about the 26th day of September, 1941, the said District Court ordered that a hearing he had upon the said petition of the bankrupt on the 27th day of October, 1941, in the United States Court House at Buffalo, New York. It was further ordered that notice of this hearing be published in the "Jamestown Post-Journal" at least once, ten days prior to said return date and that the clerk of said court send or cause to be sent by mail to all known creditors, a copy of said notice at least ten days prior to said return date. Notice of this hearing was published and mailed to creditors in pursuance of
24 said order. Five creditors of the bankrupt represented by Falk, Phillips, Twelvetrees & Falk, their attorneys, filed specifications of objections to the bankrupt's discharge substantially setting forth the following objections:

1. That bankrupt destroyed or failed to keep books of account.

2. That bankrupt has been guilty of undue delay in prosecuting his application for discharge resulting in prejudice to creditors.

3. That the bankrupt has abandoned his application for discharge.

After the hearing, the District Court for the Western District of New York, found that the creditors did not sustain the first two grounds of objection but denied the discharge on the ground that the bankrupt has abandoned his application for discharge.

POINT I

The Bankrupt should not be denied a discharge in bankruptcy on the ground other than those specified in Section 14 (c) of the Bankruptcy Act as amended.

The district Court having denied the first two grounds of objection to the granting of the bankrupt's discharge, there remains the third ground of objection to be considered on behalf of the creditors. Section 14 (b) of the Bankruptcy Act directs the court to discharge the bankrupt if no objections have been filed. This section is mandatory in its terms and the court is directed to hear the bankrupt's application for discharge and the proof on objections to the discharge in the event that objections are filed. Also, the court under this subdivision is required to investigate the merts of the application.

Section 14 (c) of the act requires the court to grant
28 the discharge unless he is satisfied that the bankrupt has done the things named in that subdivision of the statute.

Since the first two grounds of objection have been dismissed by the district court it must be assumed that the bankrupt in this case has not committed any of the acts named in the statute barring his discharge.

The district court denied the bankrupt's discharge after a date had been set for a hearing after objecting
29 creditors appeared and filed objections thereto, on a ground not specified in the bankruptcy act. This denial extended the provisions of the act, amending it to include another ground on which to deny the bankrupt's discharge, therefore, penalizing the bankrupt as heavily as the commission of the crimes and frauds mentioned in the act.

This has been held to be too great a penalty on the bankrupt who would be thereby barred forever from a discharge.

In re Neal, 270 F 289;
30 *In re Silverman,* 157 F. 675.

In the case of *In re Wolff,* 132 F. 396, the court said that Section 14 of the Bankruptcy Act specified the causes for which a discharge may be refused. Laches of the bankrupt in not bringing on for trial of the issues raised by a creditor's opposition to his application for his discharge is not one of the enumerated causes, and the

court is not authorized to extend the provisions of that act and refuse a discharge upon any other grounds than those therin set forth. 31

In the case of *Lockhart vs. Edel,* 23 F (2d) 912 it was said that the provisions of the statute relating to the bankrupt's discharge are not to be extended by construction, and are to be construed liberally in favor of the bankrupt.

These statutory grounds for opposition to a discharge are exclusive and unless one of these grounds are found the discharge must be granted. *Bluthenthal vs. Jones,* 208 U.S. 64; *Matter of Robinson,* 266 F. 970. 32

There remains no statutory grounds in the creditor's specifications of objections for denial of the discharge. Undoubtedly, the specifications should contain allegations sufficient to bring the objections within one or more of the grounds enumerated in Section 14 (c).

It has been held that if the specifications fail to allege a statutory grounds for the denial of a discharge they will be disregarded although not excepted to. 33

In re McCarthy, 170 F. 859;

In re Scheffler, 68 F. (2d) 902;

In re Little, 65 F (2d) 777.

POINT II

34

It is respectfully submitted that the specifications of objections to the granting of the discharge failed to allege any grounds upon which to deny the bankrupt his discharge and that the decision and judgment of the court below in denying the discharge should be reviewed and the Writ of Certiorari Granted.

Respectfully.

35

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36

APPENDIX

OPINION

37

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 226 — October Term, 1942.

Argued April 7, 1943 Decided April 22, 1943

Robert Norment, et al.,
Appellees,

——v.——

Ralph A. Stilwell,
Appellant.

38

Appeal from the District Court of the United States for the Western District of New York.

This is an appeal by Ralph A. Stilwell from an order denying his application for a discharge in bankruptcy on the ground of abandoment of the proceedings. Affirmed.

Before:

L. Hand, Swan and Frank
Circuit Judges.

39

Harry M. Young, Attorney for Appellants; Frank J. Militello, of Counsel.

Falk, Phillips, Twelvetrees & Falk, Attorneys for Appellees; Stanley G. Falk, of Counsel; Louis Borins on the Brief.

Opinion

This case was formerly before us on an appeal by the
40 bankrupt from an order vacating a discharge granted to him without notice to creditors and dismissing the proceedings. In re Stilwell, 120 F. 2d 194. We affirmed vacation of the discharge, but reversed dismissal of the proceedings and remanded the case with directions "to receive evidence either of prejudice to the creditors or of a deliberate determination by Stilwell to forsake the proceedings." After remand evidence was taken upon these issues and the district court denied the bankrupt's application for a discharge on the ground of abandonment. The bankrupt has appealed. The sole Question presented is
41 the sufficiency of the evidence to support the finding of abandonment and, since all the evidence was by deposition or affidavit, we are in as good a position as the trial court to appraise the evidence and are required to do so Equitable Life Assur. Soc. v. Irelan, 123 F. (2d.) 462, 464 (C. C. A. 9).

The appellant was adjudicated a voluntary bankrupt on November 10. 1930. From the fact that no creditor appeared at the first meeting of creditors and no trustee was appointed it may be inferred that no assets of sub-
42 stantial value were scheduled. Thereafter on March 23, 1931, the bankrupt filed his application for a discharge but no notice thereof was given to creditors and no hearing was had for the reason that the bankrupt failed to pay the expense of the proceedings, although the bankrupt's attorney was notified by the referee of the necessity of paying fees of $22.56 No payment having been received, on July 10,1931, the referee issued an order di-

rected to the bankrupt and his attorney to show cause why the proceedings on discharge should not be returned to the district court because of non-prosecution. Copies of this order were served on the bankrupt and his attorney by mail. Upon the return day no appearance was by or on behalf of the bankrupt. On July 27, 1931, the referee entered an order returning the case to the district court with the recommendation "that the matters be withheld until the necessary disbursements of this proceeding in the amount of $22.56 are paid." Nothing further was done in the bankruptcy until July 12, 1940, when the bankrupt caused the above mentioned sum to be paid to the successor of the former referee who was then dead. In 1933 the bankrupt had left the state of New York without notifying any one where he was going and had taken up residence in Zanesville, Ohio, under the name of Earl J. Jones. His renewal of interest in his bankruptcy proceeding was due to the fact that certain of his scheduled creditors had tracked him down and brought suit against him.

We think it obvious that the foregoing facts would not only justify but even require a finding that the bankrupt intentionally abandoned his application for a discharge unless he can produce some credible excuse for nine years of delay in prosecuting it. The excuse offered in his 1942 deposition is that in March 1931, immediately after getting word that the fees were due, he paid them to Joseph Lazaroni, a young lawyer in the office of his attorney, and shortly thereafter was informed by Mr. Lazaroni that the discharge had been granted. But the district judge was not persuaded of the truth of this ex-

planation; nor are we. One has but to read the bankrupt's
46 deposition to see how ready he was to give any answer which would serve his purpose and how unreliable is his testimony . He purports to remember that his lawyer sent him the referee's statement of fees "in the next mail after they got it" and to recall "very distinctly" the payment to Lazaroni "because I had just fifty dollars that day". Yet in an affidavit made sixteen months before his deposition he said not a word of having paid the fees or of having been told by Lazaroni that the discharge was granted, but swore that he would have paid the fees if he had known that thedischarge had not been entered. Nor
47 is his present story confirmed by the attorneys. Mr Lazaroni testified to the general method of handling moneys received from clients of the office, but had no recollection of the Stilwell case. It seems extremely unlikely that if money for the expense was received, the attorney would not have sent it to the referee. All that his affidavit says is that he has been unable to find records dealing with the payment by Stilwell of any disbursements in his bankruptcy proceedings. Finally, it may be noted that the bankrupt's story supplies no explanation of why nothing was done in response to the show cause order
48 of July 10, 1931. While there is no direct proof of delivery of a copy of the order served by mail upon the bankrupt and his attorney, neither of them has denied receipt of such copy. Our independent examinations of the record leads us to the same conclusion as that of the district judge. Accordingly the order is affirmed.

IN THE

Supreme Court of the United States

In Bankruptcy, No. 16461.

In the Matter
of
RALPH A. STILWELL, Bankrupt.

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONING CREDITORS-RESPONDENTS.

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BATAVIA TIMES, LAW PRINTERS,
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INDEX.

CASES CITED.

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In the Matter of RALPH A. STILWELL, Bankrupt.	In Bankruptcy No. 16461.

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONING CREDITORS-RESPONDENTS.

Facts.

On November 10, 1930, Ralph A. Stilwell was adjudicated a voluntary bankrupt in the United States District Court for the Western District of New York. The proceedings on bankrupt's petition were referred to Hon. Joseph C. White, now deceased, Referee in Bankruptcy of the Chautauqua and Cattaraugus Districts. Bankrupt's petition for discharge was filed with the Clerk of the District Court at Buffalo on March 23, 1931, and on the same day an order to show cause, returnable May 18, 1931, was issued by the District Judge on this petition for discharge. This order

provided that notice thereof be published in the Jamestown Evening Journal at least thirty days before the return day, and that the Referee should send or cause to be sent a copy thereof by mail to all creditors at least thirty days before the return day.

On March 24, 1931, Mr. White, the Referee, sent a letter to the bankrupt's attorney, Mr. Young, advising him of the amount of fees required, and advising him that upon receipt thereof, the notices of discharge would be published and mailed. (P. 14.)

This letter was ignored; and on July 10, 1931, Mr. White signed an order reciting that the demand for disbursements had been sent to the bankrupt's attorney and had been ignored, and directing the bankrupt and his attorney to show cause on July 17, 1931, why he should not return the order to show cause on discharge to the Clerk of the District Court for the Western District of New York because of non-prosecution. (P. 15.) This order to show cause was duly served on the bankrupt and his attorney. (P. 16.)

On July 27, 1931, the return day of the order to show cause, Mr. White made an order reciting that notice to pay the fees had been given to Mr. Young, that the order to show cause had been served on Mr. Young and the bankrupt did not file an affidavit stating that he was without, and could not obtain, money to pay for the proceeding, and ordered that the order to show cause on discharge of the bankrupt be returned to the Clerk of the United States District Court for the Western District of New York, with the recommendation that the matter be withheld until the necessary disbursements were paid. (P. 17.)

In 1933 the bankrupt made his appearance in Zanesville, Ohio, as Earl J. Jones, and lives there now under that name. He has acquired wealth, owns and publishes a newspaper, operates a coal mine, owns a coal company, transportation company, automobile sales and service agency and other enterprises, and apparently as a pastime "fights" with lawyers. (P. 52.) The bankrupt testified (P. 51) that he was in Ripley until November, 1933, when he went to Zanesville, Ohio and immediately took the name of Earl J. Jones. In 1940 it was discovered that Earl J. Jones was really the bankrupt, Ralph A. Stilwell, and his creditors brought actions to recover on their undischarged claims. (P. 51.) Then and not until then did he do anything about a discharge; and this is what he did. He paid the fees to the Hon. Arthur B. Towne, who upon Mr. White's death was appointed Referee in Bankruptcy, and, upon receipt of the money, Mr. Towne wrote the Clerk of the District Court on July 12, 1940 that he had received the fees. The letter continued as follows:

> "I understand that the discharge in the above matter was held up pending payment of this sum. The discharge may now be entered, if satisfactory to your office." (P. 18.)

The Clerk thereupon entered a discharge on July 13, 1940 (P. 19), although no notice of the bankrupt's application for discharge had ever been given any creditor. In August, 1940, on the application of several creditors of the Bankrupt, based on the foregoing facts, Judge John Knight made an order directing the bankrupt to show cause why the discharge should not be vacated and why a further order should not be made dismissing the bankrupt's proceedings for a discharge. The bankrupt appeared by his attorney, Harry M. Young, the same attorney who represented him in the bankruptcy and discharge proceedings, and filed

answering affidavits made by Mr. Young and himself. (Pp. 24, 25, 26, 27 and 28.) Both affidavits were barren of any substantial explanation for the delay of ten years in prosecuting the application for a discharge, but each affiant swore that he believed that the discharge had been granted. Neither the bankrupt nor his attorney denied receipt of the letter (P. 14) and order to show cause. (P. 15.) Neither the bankrupt nor his attorney stated the basis for his belief that the discharge had been granted. Neither attempted to justify his alleged belief in the fact of the actual advice to each of them, receipt of which was not denied, that the discharge had not been granted. Mr. Young did not state whether he made any attempt to locate his former associate; instead both men chose to stand on their bare, unexplained statements that they thought that the discharge had been granted.

On August 27, 1940, an order was granted vacating and setting aside the discharge and dismissing the proceedings for discharge. Bankrupt appealed to this court from the order and this court held that the discharge was properly set aside, on the ground that the notice to creditors, required by statute, was jurisdictional, and failure to give such notice was fatal, but reversed that part of the order which dismissed the proceedings, and remanded the case back to the District Court with directions to receive evidence either of prejudice to the creditors or of a deliberate determination by bankrupt to forsake the proceedings. (Pp. 8, 9 and 10.) Thereupon notice to creditors was published and mailed. Objections to the discharge were filed, specifying, among other things, abandonment by the bankrupt of his application for discharge. (Pp. 31 and 32.) The depositions of Robert T. Norment, one of the objecting creditors, Mr. Joseph A. Lazaroni, Mr. Young's former associate and the bankrupt were taken, and submitted to the court, and the

court sustained the objection that bankrupt had abandoned his application for discharge.

On September 25, 1942, an order was entered denying the application for discharge on the ground of abandonment by the bankrupt, together with $100.00 costs and disbursements. From this order the bankrupt again appealed to the United States Circuit Court of Appeals for the Second Circuit. The Circuit Court affirmed the order and said, among other things:

> "The facts would not only justify but even require a finding that the bankrupt abandoned his application for a discharge."

From this order of affirmance the bankrupt appeals.

Question Presented.

Did the bankrupt abandon his application?

LAW.

POINT I.

An application for a discharge in bankruptcy, like any other application or any other proceeding, can be abandoned by the applicant.

All Courts, including the United States Supreme Court, have recognized that any proceeding or any right can be abandoned. It was said by the United States Supreme Court, in *Moran v. Horsky*, 178 U. S. 205:

> "We need only refer to the many cases decided in this court and elsewhere, that a neglected right, if neglected too long, must be treated as an abandoned right which no court will enforce."

On this theory, the Circuit and District Courts of the United States have consistently held that a bankrupt guilty of wilful or intentional neglect or abandonment of an application for a discharge will not have his discharge.

See

Lindeke v. Converse, 198 Fed. 618, C. C. A. 8th Cir. 1912.

In re Lederer, (D. C.) 125 Fed. 96.

In re Reisler, 275 Fed. 65 (reversed on other grounds 278 Fed. 618).

The bankrupt in the case at bar failed to perfect his application for discharge at the time he made it by not paying the fees which he was under an obligation to pay. It is no injustice to the bankrupt to deny him a discharge on this ground, because of the fact that he could have proceeded as a pauper if it was impossible for him to pay the fees, and he also failed for a period of ten years to prosecute his application for a discharge. The finding of the court that he abandoned his proceeding by this conduct is certainly sustained by the record. To deny him his discharge because he made no effort to get it, it is submitted, does not amend the Bankruptcy Act so as to include another ground on which to deny the bankrupt's discharge, but does nothing more than recognize what the courts have always recognized, to wit: the possibility that a man can abandon a proceeding or a right.

The bankrupt, in his brief, states that he is being penalized as heavily as if he had committed one of the crimes or frauds mentioned in the Act. In this connection, may we point out that the Circuit Court has said about the bankrupt:

> "One has but to read the bankrupt's deposition to see how ready he was to give any answer which would serve his purpose and how unreliable was his testimony."

If the bankrupt had not filed his application for a discharge within the time provided by the Bankruptcy Act, he could not have obtained a discharge, no matter how virtuous he had been. In this case, the bankrupt went through the formality of filing an application within the time provided by the Bankruptcy Act, but his subsequent conduct indicated that this technical compliance was a sham; that there was no substance to it; that he did not really intend to pursue his application for discharge, even if he were entitled to one; and that he abandoned the whole proceeding. While the record indicates that the bankrupt is not a man of shining virtues, this point is not pressed, but it is respectfully submitted that the record amply sustains the finding that the bankrupt did abandon the whole proceeding for a discharge, and having so abandoned it, was not entitled to obtain a discharge any more than if he had not made the technical compliance that he did.

Under the circumstances, it is respectfully submitted that the bankrupt lost, by his own neglect, regardless of any rights he may have had, the right to obtain a discharge, and put himself in the same position as if he had never filed an application therefor.

POINT II.

Bankrupt's petition for a writ of certiorari should be denied.

Respectfully submitted,

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